

an amendment to an application for registration as a transfer agent under this section, which registration has not become effective, shall postpone the effective date of the registration for 30 days following the date on which the amendment is filed unless the OCC accelerates, denies, or postpones the registration in accordance with Section 17A(c) of the Securities Exchange Act of 1934.

(3) *Withdrawal from registration.* Any registered national bank transfer agent that ceases to engage in activities that require registration under Section 17A(c) of the Securities Exchange Act of 1934 may file a written notice of withdrawal from registration with the OCC. Deregistration shall be effective 60 days after filing.

(4) *Reports.* Every registration or amendment filed under this section shall constitute a report or application within the meaning of Sections 17, 17A(c), and 32(a) of the Securities Exchange Act of 1934.

(b) *Operational and reporting requirements.* The rules adopted by the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934 prescribing operational and reporting requirements for transfer agents apply to the domestic activities of registered national bank transfer agents.

[73 FR 22242, Apr. 24, 2008]

INTERPRETATIONS

§ 9.100 Acting as indenture trustee and creditor.

With respect to a debt securities issuance, a national bank may act both as indenture trustee and as creditor until 90 days after default, if the bank maintains adequate controls to manage the potential conflicts of interest.

§ 9.101 Providing investment advice for a fee.

(a) *In general.* The term “fiduciary capacity” at § 9.2(e) is defined to include “investment adviser, if the bank receives a fee for its investment advice.” In other words, if a bank is providing investment advice for a fee, then it is acting in a fiduciary capacity. For purposes of that definition, “investment adviser” generally means

a national bank that provides advice or recommendations concerning the purchase or sale of specific securities, such as a national bank engaged in portfolio advisory and management activities (including acting as investment adviser to a mutual fund). Additionally, the qualifying phrase “if the bank receives a fee for its investment advice” excludes those activities in which the investment advice is merely incidental to other services.

(b) *Specific activities*—(1) *Full-service brokerage.* Engaging in full-service brokerage may entail providing investment advice for a fee, depending upon the commission structure and specific facts. Full-service brokerage involves investment advice for a fee if a non-bank broker engaged in that activity is considered an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*).

(2) *Activities not involving investment advice for a fee.* The following activities generally do not entail providing investment advice for a fee:

(i) Financial advisory and counseling activities, including strategic planning of a financial nature, merger and acquisition advisory services, advisory and structuring services related to project finance transactions, and providing market economic information to customers in general;

(ii) Client-directed investment activities (*i.e.*, the bank has no investment discretion) where investment advice and research may be made available to the client, but the fee does not depend on the provision of investment advice;

(iii) Investment advisory activities incidental to acting as a municipal securities dealer;

(iv) Real estate management services provided to other financial institutions;

(v) Real estate consulting services, including acting as a finder in locating, analyzing, and making recommendations regarding the purchase of property, and making recommendations concerning the sale of property;

(vi) Advisory activities concerning bridge loans;

(vii) Advisory activities for homeowners’ associations;

(viii) Advisory activities concerning tax planning and structuring; and